

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Whitney Beber	Team: Squad #2	CCRB Case #: 201706170	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 07/24/2017 3:55 PM	Location of Incident: Bay Street and Edgewater Street	Precinct: 120	18 Mo. SOL 1/24/2019	EO SOL 1/24/2019	
Date/Time CV Reported Mon, 07/31/2017 1:45 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Mon, 07/31/2017 1:45 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Benito Intravaia	15112	955998	120 PCT
2. POM Elmer Pastran	06851	956154	120 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Elmer Pastran	Abuse: Police Officer Elmer Pastran stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Benito Intravaia	Abuse: Police Officer Benito Intravaia stopped the vehicle in which § 87(2)(b) was an occupant.	
C.POM Elmer Pastran	Abuse: Police Officer Elmer Pastran frisked § 87(2)(b)	
D.POM Elmer Pastran	Abuse: Police Officer Elmer Pastran searched § 87(2)(b)	
E.POM Elmer Pastran	Abuse: Police Officer Elmer Pastran searched the vehicle in which § 87(2)(b) was an occupant.	
F.POM Benito Intravaia	Off. Language: Police Officer Benito Intravaia made remarks to § 87(2)(b) based upon ethnicity.	
G.POM Elmer Pastran	Abuse: Police Officer Elmer Pastran threatened to arrest § 87(2)(b)	

Case Summary

On July 31, 2017, § 87(2)(b) filed the following complaint in-person at the Civilian Complaint Review Board (CCRB). It was referred to the Mediation Unit on September 29, 2017. On November 20, 2017, following Police Officer Pastran's failure to appear for a mediation session, it was returned to the Investigations Division at the request of § 87(2)(b).

On July 24, 2017, at approximately 3:55 p.m. § 87(2)(b) was driving down Edgewater Street in Staten Island and stopped at a red light at the intersection where Edgewater Street meets Bay Street and Front Street. He then made a right turn onto Front Street. After he turned he saw an NYPD car with its lights on. § 87(2)(b) continued to drive. § 87(2)(b) heard a command to stop the car approximately three to four times (**Allegations A and B: Abuse of Authority, § 87(2)(g)**). He continued to drive. Approximately a minute later, § 87(2)(b) pulled over and exited his car on his own. Police Officer Elmer Pastran and Police Officer Benito Intravaia of the 120th Precinct exited the police car. § 87(2)(b) started walking towards the officers. Police Officer Pastran ran towards § 87(2)(b) handcuffed him and proceeded to pat him down. **Allegation C: Abuse of Authority, § 87(2)(g)**. Police Officer Pastran removed § 87(2)(b) wallet from his pocket and removed his license from the wallet (**Allegations D: Abuse of Authority, § 87(2)(g)**). Police Officer Pastran then allegedly searched § 87(2)(b) car (**Allegation E: Abuse of Authority, § 87(2)(g)**). Police Officer Intravaia allegedly asked § 87(2)(b) what country he was from and how long he had been in America. § 87(2)(b) replied that he was from Bangladesh. To which Police Officer Intravaia allegedly replied that § 87(2)(b) should "speak better English," (**Allegation F: Offensive Language, § 87(2)(g)**). Police Officer Pastran allegedly told § 87(2)(b) approximately five to six times throughout the incident that he would send § 87(2)(b) to jail (**Allegation G: Abuse of Authority, § 87(2)(g)**).

At the end of the incident, Police Officer Intravaia issued § 87(2)(b) two summonses, one for disobeying a steady red light and another for failure to yield to an emergency vehicle (Board Review 03).

There was no video footage found for this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Elmer Pastran stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation (B) Abuse of Authority: Police Officer Benito Intravaia stopped the vehicle in which § 87(2)(b) was an occupant.

On July 31, 2017, § 87(2)(b) was interviewed at the CCRB. On August 4, 2017, and on August 18, 2017, § 87(2)(b) answered follow-up questions over the telephone (Board Review 01 and 02). On December 5, 2017, Police Officer Pastran and Police Officer Intravaia were interviewed at the CCRB.

It is undisputed that on July 24, 2017, § 87(2)(b) was driving down Edgewater Street in Staten Island and made a right turn at a red light onto Front Street while Police Officer Pastran and Police Officer Intravaia were also attempting to make a turn at the same intersection. A sign at the

intersection allows vehicle to make a right turn on a red light after coming to a stop (Board Review 13). Police Officer Pastran and Police Officer Intravaia tried to pull § 87(2)(b) over multiple times by activating their lights, and issuing commands over the loud speaker. § 87(2)(b) did not stop immediately and, when he did pull over, he exited his vehicle without any officers instructing him to do so. Police Officer Pastran handcuffed § 87(2)(b) patted him down, reached into a pocket and removed § 87(2)(b) wallet, and then removed his ID from the wallet. Police Officer Pastran told § 87(2)(b) that he could be arrested.

As per § 87(2)(b) he stopped at Edgewater Street, at the intersection with Bay Street and Front Street just before a sign that said, “After the stop, right turn permitted on red.” At this point § 87(2)(b) observed a marked car in the middle of the intersection, turning from Bay Street to Edgewater Street. § 87(2)(b) was stopped for approximately three to four seconds, after which point he turned on his right signal and made a right turn onto Front Street. Approximately ten seconds after turning, he saw the marked car with its turret lights on, but he heard no sirens, so he continued driving. § 87(2)(b) then heard approximately three to four commands to stop the car. Believing that the officers were not speaking to him, § 87(2)(b) continued to drive. After approximately thirty seconds, § 87(2)(b) pulled over with the intention of making room for the marked car. § 87(2)(b) then exited his car because he wanted to see what was happening behind him. The marked car stopped behind him and Police Officer Pastran and Police Officer Intravaia ran towards § 87(2)(b).

As per Police Officer Pastran, he was driving down Bay Street with Police Officer Intravaia and was preparing to make a left turn onto Front Street when he observed § 87(2)(b) who was driving down Edgewater Street, making a right turn at a red light, onto Front Street causing him to almost collide with the police vehicle. § 87(2)(b) did not stop at the red light. Police Officer Pastran “slammed” on his breaks and § 87(2)(b) continued to drive at approximately forty-five miles per hour down Front Street. Police Officer Pastran stated that there was a sign at the location allowing for cars to make right turns at red lights after coming to a stop, but that § 87(2)(b) failed to stop at the red light and thus, failed to allow the marked car to clear the intersection before making his turn. Police Officer Pastran signaled to § 87(2)(b) to pull over using lights, sirens, and used the loud speaker to tell him to pull over. § 87(2)(b) did not stop for approximately two-hundred hundred feet. Once § 87(2)(b) stopped, Police Officer Pastran and Police Officer Intravaia exited their vehicle. When they did so, § 87(2)(b) “took off” again traveling approximately twenty to thirty miles per hour. Police Officer Pastran and Police Officer Intravaia pulled § 87(2)(b) over again. § 87(2)(b) stopped again shortly thereafter.

Police Officer Intravaia’s statement was consistent with that of Police Officer Pastran aside from the speed at which § 87(2)(b) was traveling. Police Intravaia stated that § 87(2)(b) was driving very slowly, at approximately five miles per hour.

Summons number § 87(2)(b) was issued to § 87(2)(b) by Police Officer Intravaia for failure to yield to an emergency vehicle at the corner of Bay Street and Edgewater Street on July 24, 2017 at 3:55 p.m. (Board Review 03). Summons number § 87(2)(b) was issued to § 87(2)(b) by Police Officer Intravaia for disobeying a steady red light at the corner of Bay Street and Edgewater Street on July 24, 2017, at 3:55 p.m. (Board Review 03).

Vehicle and Traffic Law section 1144a states that upon the immediate approach of an authorized emergency vehicle equipped with at least one lighted lamp exhibiting red light, and when audible signals are sounded from any said vehicle, the driver of every other vehicle shall yield the right of way until the authorized emergency vehicle has passed, unless otherwise directed by an officer (Board Review 05).

Vehicle and Traffic Law section 1111 D1 states that traffic, facing a steady circular red signal, unless to make such other movement as is permitted by other indications shown at the same time, shall stop at a clearly marked stop line and shall remain standing until an indication to proceed is shown (Board Review 12).

§ 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Elmer Pastran frisked § 87(2)(b)

As per § 87(2)(b) after Police Officer Pastran and Police Officer Intravaia ran towards him, Police Officer Pastran handcuffed him and then patted his back, chest, and legs. Police Officer Pastran then reached inside § 87(2)(b) rear pants pocket and pulled out his wallet. Police Officer Pastran opened § 87(2)(b) wallet and pulled out his license, and his § 87(2)(b) license, and a PBA card.

While § 87(2)(b) was generally consistent between his sworn statement and his initial follow-up statement, during his second follow-up statement, § 87(2)(b) alleged that Police Officer Pastran entered the two front pockets of his pants, as opposed to only one rear pocket.

As per Police Officer Pastran, after running towards § 87(2)(b) he handcuffed him and then patted him down for his safety, his partner's safety and to check to see if § 87(2)(b) had any weapons. Police Officer Pastran suspected that § 87(2)(b) may have had weapons because he got out of his vehicle without being instructed to and was walking towards officers. § 87(2)(b) appeared nervous because of his actions and the way he was looking around. Police Officer Pastran added that he "always assumes the worst" in such circumstances. At the time § 87(2)(b) exited his car and was walking towards the officers, Police Officer Pastran could see his hands, which were out, and did not see any bulges on him. Police Officer Pastran patted down § 87(2)(b) around his waist band, his chest and his legs. Police Officer Pastran did not feel anything that alarmed him. Police Officer Pastran asked § 87(2)(b) where his license was. § 87(2)(b) replied saying that it was in one of his pockets. Police Officer Pastran entered only that pocket to retrieve § 87(2)(b) wallet from his pocket and extract his license from the wallet. He then

returned the wallet to § 87(2)(b) pocket.” Police Officer Pastran denied having removed a PBA card from § 87(2)(b) wallet. After he checked § 87(2)(b) information to make sure he was not wanted and established that § 87(2)(b) had no reason to run, such as prior warrants or arrests, he uncuffed § 87(2)(b).

As per Police Officer Intravaia, he feared for his safety because § 87(2)(b) was behaving “very strangely” because he seemed to understand English well enough to understand them and he had a driver’s license yet he did not stop for the officers and then he ran towards them. Police Officer Intravaia could see § 87(2)(b) hands when first approached them and did not think that he had anything in his hands. Police Officer Intravaia suspected § 87(2)(b) may have had a weapon because he ran towards the officers and was not listening to them. Police Officer Intravaia was not sure where on § 87(2)(b) body Police Officer Pastran patted down and he did not remember if Police Officer Pastran searched him or entered any of his pockets.

§ 87(2)(g)

However, Police Officer Intravaia and Police Officer Pastran were consistent that Police Officer Pastran was the only officer to have patted § 87(2)(b) down and search him. Therefore the allegations that an officer frisked and searched § 87(2)(b) are being pleaded against Police Officer Pastran.

People v. DeBour, 40 N.Y. 2d 210 (1976) states that to conduct a corollary of the statutory right to temporarily detain for questioning is the authority to frisk if the officer reasonably suspects that he is in danger of physical injury by virtue of the detainee being armed.

People v. Shuler, 98 A.D. 3d 695 (2012) states that to conduct a pat-down or frisk without probable cause, the officer must have knowledge of some fact or circumstance that supports a reasonable suspicion that the suspect is armed (Board Review 06). Such considerations include the substance and reliability of the report that brought the officers to the scene, the nature of the crime that the police are investigating, the suspect’s behavior, and the shape, size and location of any bulges in the suspect’s clothing. In Shuler, officers came across an individual using a screwdriver to pry the lock off of a bicycle. Upon officers asking him to put the screwdriver down, he immediately complied. The crime he was suspected of was non-violent, he did not reach toward his pockets, and while the officers saw a bulge in his pocket, they did not believe it was a gun or a knife. The individual appeared nervous to the officers and appeared to be scanning the fence line, avoiding eye contact. The officers suspected that he would flee and frisked him. The court ruled that these facts did not justify a frisk.

People v. Davila, 27 Misc. 3d 921 (2010) is an example of a case in which the courts determined that officers were justified in a frisk of an individual after they had exited a vehicle (Board Review 07). In that case, officers observed an occupant of the car make physical movements that suggested he was concealing a weapon. Once the occupant was outside of the car, the officers observed a bulge protruding from his groin and upper thigh area. These observations constituted a reasonable suspicion that warranted a frisk.

DeBour sets the principle that in order to frisk someone officers must reasonably suspect that he is in danger of physical injury because they believe the person they are detaining is armed. Shuler provides examples of observations that are insufficient in justifying a frisk including establishing that reasonable belief that an individual is nervous or may flee does not give rise to the justification for a risk and Davila provides an example of what type of observations do justify a frisk.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Allegation (D) Abuse of Authority: Police Officer Elmer Pastran searched § 87(2)(b)

It is undisputed that an officer reached into § 87(2)(b) pocket to retrieve his wallet, removed his ID from the wallet, and then returned the wallet to § 87(2)(b). However, as discussed above, § 87(2)(b) provided inconsistent accounts over his three statements as to which officer took this action and the number of pockets into which they reached, stating in his initial statements that the officer only reached into the pocket with the wallet and then stating in his final following statement that he entered multiple pockets. Therefore the investigation is crediting Police Officer Pastran in regards to the search, in that he was the only officer who did it, only entered one pocket, which is consistent with § 87(2)(b) own first two statements to the CCRB, and only did so after § 87(2)(b) informed him of which pocket held his ID.

Patrol Guide Section 209-03 states that when issuing a civil summons, an officer is to establish the violator's identity and mailing address through observation of valid identification documents. If they do not possess a valid form of identification, the officer is to remove the violator to the command (Board Review 08).

In People v. Pryor, 26 Misc. 3d 997 (2009) officers observed a vehicle commit a traffic infraction. They directed the vehicle to pull over for a routine traffic stop. Upon stopping the vehicle, the officers requested the driver's license, registration and proof of insurance. The driver produced his license but not his registration or insurance card. In response to additional requests for his registration and insurance card the driver provided the specific location of the paperwork. Once out of the vehicle, one of the officers entered vehicle with the limited purpose of retrieving the registration and insurance documentation from the location the driver said it was located. The court determined that it was understandable and appropriate that the officers made the common sense decision to attempt to retrieve the paperwork by going to the place directed by the driver.

§ 87(2)(g)

§ 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer Elmer Pastran searched the vehicle in which § 87(2)(b) was an occupant.

As per § 87(2)(b) Police Officer Pastran searched his car by opening all of the compartments in his car and looking under the seats.

As per Police Officer Pastran, while § 87(2)(b) was detained at the rear of his vehicle, he “peeked” into § 87(2)(b) vehicle through the open driver’s side window without reaching any part of his body into the car, and looked around § 87(2)(b) car. Police Officer Pastran did so to determine if he saw any weapons in plain view or if he smelled any drugs. Neither Police Officer Pastran nor Police Officer Intravaia opened the doors to § 87(2)(b) vehicle.

Police Officer Intravaia remembered that the driver’s side door had been left open by § 87(2)(b). He observed Police Officer Pastran walk around M. § 87(2)(b) car and look into it but neither he nor Police Officer Pastran entered § 87(2)(b) car. Police Officer Intravaia did not remember if at any point, while Police Officer Pastran was looking into the car, if any part of his body crossed the threshold of the doorway.

§ 87(2)(g)

Allegation (F): Offensive Language: Police Officer Benito Intravaia made remarks to § 87(2)(b) based on ethnicity.

As per § 87(2)(b) after Police Officer Pastran pulled out his wallet and driver licenses, Police Officer Intravaia asked him what country he was from and how long he had been in the United States. § 87(2)(b) replied that he was from Bangladesh and had been in the United States for almost four years. Police Officer Intravaia asked § 87(2)(b) if he understood English. Police Officer Intravaia told Mr. § 87(2)(b) that he was not from North American either, but that he spoke better English and told § 87(2)(b) that he should speak better English as well.

Police Officer Pastran believed that there was a language barrier when he was talking to § 87(2)(b). However, he stated that the topic of language never came up between § 87(2)(b) and the officers. Neither Police Officer Pastran nor Police Officer Intravaia asked § 87(2)(b) about a language barrier. At no point did Police Officer Pastran tell § 87(2)(b) that he should speak better English and he did not hear Police Officer Intravaia say this.

As per Police Officer Intravaia there was no discussion about a language barrier or what language § 87(2)(b) spoke. No officer told § 87(2)(b) that he should speak better English. There was no discussion about what country § 87(2)(b) was from or how long he had been in the country.

§ 87(2)(g)

Allegation (G): Abuse of Authority: Police Officer Elmer Pastran threatened to arrest

§ 87(2)(b)

§ 87(2)(b) alleged that five to six times throughout the incident Police Officer Pastran told him that the officers would send him to jail. § 87(2)(b) only described exiting his car on one occasion, when he first stopped his car.

As per Police Officer Pastran, after he checked § 87(2)(b) information to make sure he was not wanted and had established that § 87(2)(b) did not have any reason to run, such as any warrants or prior arrests, he removed the handcuffs from § 87(2)(b). Police Officer Pastran told § 87(2)(b) to stay in his vehicle, while they “did what they had to do.” Police Officer Pastran told § 87(2)(b) not to get out of the car again. Police Officer Pastran and Police Officer Intravaia returned to their vehicle. Police Officer Intravaia proceeded to write the summonses. They had been in their car for approximately three to four minutes when § 87(2)(b) exited his vehicle again and started walking towards the officers’ vehicle. Police Officer Pastran immediately exited his vehicle and told § 87(2)(b) to get back into his vehicle. § 87(2)(b) returned to his vehicle. Police Officer Intravaia continued to write the summonses. Approximately another three minutes passed before § 87(2)(b) exited his and started walking towards the officers’ vehicle again. Police Officer Pastran exited his vehicle, and told § 87(2)(b) “If you get out of the car one more time, you’re going to force me to arrest you for my safety.” Police Officer Pastran stated that § 87(2)(b) could have been arrested for obstructing governmental administration because he was not allowing the officers to issue him a summons by his behavior.

As per Police Officer Intravaia, after the handcuffs were removed from § 87(2)(b) they told him to get back into his car. Police Officer Pastran told § 87(2)(b) “If you get out of the car again, you’re going to jail.” Police Officer Intravaia stated that § 87(2)(b) would have been in violation of obstructing governmental administration.

Penal Law section 195.05 states that a person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function by means of interference (Board Review 09).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint that § 87(2)(b) has been involved in (Board Review 10).

- Police Officer Pastran has been a member of the NYPD for three years and has four prior CCRB allegations against him within four complaints, none of which have been substantiated. § 87(2)(g)
- Police Officer Intravaia has been a member of the NYPD for three years and has one prior CCRB allegation within one complaint, which was not substantiated.

Mediation, Civil and Criminal Histories

- Mediation was offered and accepted by § 87(2)(b) at the conclusion of his in-person interview on July 31, 2017. The case was returned from mediation on November 20, 2017, at the request of § 87(2)(b) after Police Officer Pastran failed to appear for a scheduled mediation session.
- § 87(2)(b) has no prior criminal convictions (Board Review 11).
- On August 4, 2017, § 87(2)(b) filed a Notice of Claim with the New York City Comptroller's office, alleging that officers stopped, handcuffed and issued him two summonses and spoke to him disrespectfully due to his religion and race, and requested \$200, 000 as compensation (Board Review 14).

Squad No.: _____

Investigator: _____

Signature	Print Title & Name	Date
-----------	--------------------	------

Squad Leader: _____

Signature	Print Title & Name	Date
-----------	--------------------	------

Reviewer: _____

Signature	Print Title & Name	Date
-----------	--------------------	------